

Federal Trade Commission

§ 316.2

§ 315.10 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

§ 315.11 Effect on state and local laws.

(a) State and local laws and regulations that establish a prescription expiration date of less than one year or that restrict prescription release or require active verification are preempted.

(b) Any other State or local laws or regulations that are inconsistent with the Act or this part are preempted to the extent of the inconsistency.

PART 316—CAN-SPAM RULE

Sec.

316.1 Scope.

316.2 Definitions.

316.3 Primary purpose.

316.4 Requirement to place warning labels on commercial electronic mail that contains sexually oriented material.

316.5 Prohibition on charging a fee or imposing other requirements on recipients who wish to opt out.

316.6 Severability.

AUTHORITY: 15 U.S.C. 7701-7713.

SOURCE: 73 FR 29677, May 21, 2008, unless otherwise noted.

§ 316.1 Scope.

This part implements the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act"), 15 U.S.C. 7701-7713.

§ 316.2 Definitions.

(a) The definition of the term "affirmative consent" is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(1).

(b) "Character" means an element of the American Standard Code for Information Interchange ("ASCII") character set.

(c) The definition of the term "commercial electronic mail message" is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(2).

(d) The definition of the term "electronic mail address" is the same as the

definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(5).

(e) The definition of the term "electronic mail message" is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(6).

(f) The definition of the term "initiate" is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(9).

(g) The definition of the term "Internet" is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(10).

(h) "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(i) The definition of the term "procure" is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(12).

(j) The definition of the term "protected computer" is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(13).

(k) The definition of the term "recipient" is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(14).

(l) The definition of the term "routine conveyance" is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(15).

(m) The definition of the term "sender" is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(16), *provided that*, when more than one person's products, services, or Internet website are advertised or promoted in a single electronic mail message, each such person who is within the Act's definition will be deemed to be a "sender," except that, only one person will be deemed to be the "sender" of that message if such person: (A) is within the Act's definition of "sender"; (B) is identified in the "from" line as the sole sender of the message; and (C) is in compliance with 15 U.S.C. 7704(a)(1), 15 U.S.C. 7704(a)(2), 15 U.S.C. 7704(a)(3)(A)(i), 15 U.S.C. 7704(a)(5)(A), and 16 CFR 316.4.

(n) The definition of the term "sexually oriented material" is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7704(d)(4).

(o) The definition of the term "transactional or relationship messages" is